IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

OP.No. 15452 of 2003(M)

PETITIONER:

JOSE EAPACHEN S/O. JOSEPH,
MANAGER, M/S.KURUVITHADAM AGENCIES (P) LTD.,
MUVATTUPUZHA,ERNAKULAM DISTRICT, RESIDING AT 1/363
KUNNAPPILLIL HOUSE, MUVATTUPUZHA.

BY ADV. SRI.C.G.SUNIL
SRI.SAJI MATHEW
SRI.DENU JOSEPH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF MOTOR VEHICLES,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ADDITIONAL REGISTERING AUTHORITY,
RURAL REGIONAL TRANSPOROT OFFICER, MUVATTUPUZHA.

BY GOVERNMENT PLEADER SHRI. SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 15452/03

APPENDIX

PETITIONER'S EXTS:

Ext.P1 True copy of the order of the Hon'ble Sub Court, Ernakulam dt. 15.7.02 vesting the property on auction purchaser.

Ext.P2 true copy of the judgment in O.P.No.39506/02 passed by the Hon'ble High Court of Kerala.

Ext.P3 true copy of the relevant pages of the certificate of registration of the vehicle KL-7 M 583 issued by the Addl. Registering Authority, Muvattupuzha.

Ext.P4 true copy of the request for issuance of Certificate of fitness and goods carriage permit dated 16.4.2003.

Ext.P5 true copy of the application dated 16.4.2003 for issuing fitness certificate.

Ext.P6 true copy of the application dated 19.4.2003 for issuing goods carriage permiti in Form P.Gd.S.A.

Ext.P7 true copy of the receipt issued by the office of the 2nd respondent acknowledging receipt of money for the goods carriage permit.

Antony Dominic, J.
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O.P.No.15452 of 2003
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Dated this the 19th day of February, 2007.

JUDGMENT

In view of certain subsequent developments that have occurred during the pendency of this Original Petition, most of the reliefs sought for, do not now survive for consideration. However, even after subsequent amendment to the pleadings, the remaining grievance of the petitioner that require consideration are regarding the levy of tax during the period from 1.7.2000 to 31.10.2000 and also imposition of penalty for 48 months as a condition precedent for issuing certificate of fitness for his vehicle.

2. It is seen that the petitioner had purchased the vehicle bearing Registration No.KL-7 M 583 in court auction held by the Sub Court, Ernakulam on 28.1.2002 and the sale was confirmed in his favour on 11.4.2002. Subsequently, he applied for certificate of fitness, which led to the controversy. The petitioner had earlier filed O.P.No.39506 of 2002 before this Court complaining that his application for transfer of the registration into his name was not considered by the Authority concerned. The above Original Petition

was disposed of by Ext.P2 judgment dated 27.12.2002, in which this Court directed consideration of his application for transfer of the registration into his name and specifically found that the liability of the petitioner to pay tax for the vehicle is from the date he took possession of the same or from the date of sale confirmation.

3. It is stated that during the pendency of the Writ Petition, the petitioner has got certificate of fitness in his favour, but however he has been made liable for motor vehicle tax during the period 1.7.2000 to 31.10.2000. In view of the finding of this Court in Ext.P2 judgment, the liability of the petitioner to pay tax commences only subsequent to 11.4.2002, the date on which the sale was confirmed in his favour. If that be the position, the petitioner could not have been held liable to pay tax for the period from 1.7.2000 to 31.10.2000 and such realisation runs counter to Ext.P2 judgment.

4. In so far as the levy of penalty of Rs.9,600/- for 48 months, vide Exts.P8 and P9 produced by the petitioner is concerned, it is seen that the petitioner had applied for fresh certificate of fitness and not for renewal of the existing certificate of fitness. The levy of penalty as provided for in Rule 105(4) of the Kerala Motor Vehicles Rules (hereinafter referred to as "the Rules") can be imposed only in the circumstances provided in Rule 105(5) of the Act. It is stated that levy

of penalty can be imposed only in the context of failure of production of the vehicle for the renewal of certificate of fitness on or before the date of expiry or where a vehicle is produced for re-examination for the issue of certificate of fitness after the date specified therefore under Rule 108 or Sub-rule (2) of Rule 109 or Rule 110 of the Kerala Motor Vehicles Rules 1989. Since the application of the petitioner was for the issue of a fresh certificate of fitness, which is permissible under the Rules, the circumstances warranting imposition of penalty under Section 105(5) of the Act are absent. If that be so, levy of penalty of Rs.9,600/- is also irregular.

5. For the aforesaid reasons, I quash levy of penalty of Rs.9,600/- and the levy of tax for the period from 1.7.2000 to 31.10.2000 on the petitioner and the respondents are directed to refund the aforesaid amounts paid by the petitioner within a period of six months from the date of receipt of a copy of this judgment. Original Petition is allowed as above, no costs.

Antony Dominic
Judge.

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